



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS-HQ-MB-2022-0090; FF09M30000-234-FXMB1231099BPP0]

RIN 1018–BF64

Migratory Bird Hunting; Migratory Game Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: As part of the rulemaking process for the 2023–2024 season, the U.S. Fish and Wildlife Service (hereinafter, Service or we) proposes a revised process for establishing special regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for migratory bird hunting seasons. We are proposing no longer to require that Tribes annually submit a proposal to the Service for our review and approval and no longer to publish in the *Federal Register* the annual Tribal migratory bird hunting regulations, and instead to adopt as regulations elements of our current guidelines for establishing special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The Service recognizes the reserved hunting rights and management authority of Indian Tribes. Since the 1985–86 hunting season, we have successfully employed guidelines to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands. We conclude that Tribal migratory bird harvest has been small with negligible impact to bird population status. We anticipate that Tribal hunting of migratory birds will continue to have similar negligible impacts to bird populations in the future. By proposing these regulations, the Service seeks to strengthen Tribal sovereignty and to reduce administrative burdens on both the Tribes and the Service while continuing to sustain healthy

migratory game bird populations for future generations.

DATES: Submit comments by [INSERT DATE 45 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-HQ-MB-2022-0090.
- U.S. mail: Public Comments Processing, Attn: FWS-HQ-MB-2022-0090, U.S. Fish and Wildlife Service; MS: PRB (JAO/3W); 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Public Comments**, below, for more information).

Document availability: Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, 5275 Leesburg Pike, MS–MB, Falls Church, VA 22041–3803; (703) 358–2506.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when “hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg” of migratory game birds can take place and to adopt regulations for this purpose. These regulations must give due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds (16 U.S.C. 704(a)). The Secretary of the Interior has delegated to the Service the lead Federal responsibility for managing and conserving migratory birds in the United States; however, migratory bird management is a cooperative effort of Federal, Tribal, and State governments. Federal regulations pertaining to migratory bird hunting are located in title 50 of the Code of Federal Regulations in part 20.

Acknowledging regional differences in hunting conditions, the Service has administratively divided the United States into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State within the Flyway, as well as Provinces in Canada that share migratory bird populations with the Flyway. The Flyway Councils, established through the Association of Fish and Wildlife Agencies, assist in researching and providing migratory game bird management information for Federal, Tribal, State, and Provincial governments, as well as private conservation entities and the general public.

The Service annually develops migratory game bird hunting frameworks, or outside limits, for season dates, season lengths, shooting hours, bag and possession limits, and areas where migratory game bird hunting may occur (50 CFR part 20, subpart K). Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service

undertakes several surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, Tribes, and State and Provincial wildlife management agencies. For each annual regulatory cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information through a series of published status reports and presentations to the Flyway Councils and other interested parties. The August 6, 2015, *Federal Register* at 80 FR 47388 provides a detailed overview of this process.

The Federal frameworks are necessary to allow harvest at levels compatible with migratory game bird population status and habitat conditions. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, condition of breeding and wintering habitat, number of hunters, and anticipated harvest. After frameworks are established, States may select migratory game bird hunting seasons within these frameworks. States may always be more conservative in their selections than the Federal frameworks, but never more liberal.

On November 3, 2022, we published proposed hunting regulations for certain migratory game birds for the 2023–24 hunting season (87 FR 66247). In that proposed rule, we stated that we would handle Tribal regulations via a separate rulemaking process in later *Federal Register* documents. Accordingly, this document begins the process for developing migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands for the 2023–24 hunting season and beyond.

Current Tribal Rulemaking Process

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, *Federal Register* (50 FR 23467) to establish special migratory game bird hunting regulations (independent from the State or States where the reservation is located) on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to Tribal requests for our recognition of their reserved hunting rights, and for some Tribes, recognition of their authority to regulate hunting by both

Tribal and nontribal members throughout their reservations. The guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while also ensuring that the migratory game bird resource receives necessary protection. The Service adopted the 1985 guidelines as final in 1988 (53 FR 31612, August 18, 1988).

From the 1985 through 2022 hunting seasons, as part of our preliminary proposed rule to annually promulgate Federal migratory bird hunting regulations, we asked Tribes to submit their proposed migratory bird hunting regulations. Proposals were to include season dates and other regulations, methods to monitor harvest, anticipated harvest, steps taken to limit harvest levels, and capabilities to establish and enforce migratory bird hunting regulations.

Each year, upon receipt of information on the status of migratory bird populations and expected migratory bird harvest provided by the Tribes, we evaluated the potential impact of special Tribal hunting regulations on the migratory bird resource. We have always concluded that this harvest is small and, therefore, would have a negligible impact to the bird population status. Annually, we published in the *Federal Register* the special Tribal migratory bird hunting regulations as a proposed rule and, following review and consideration of any public comments, published a final rule setting forth these regulations.

Proposed New Process for Managing Tribal Migratory Bird Hunting

We anticipate that Tribal hunting will continue to have similar minimal impact to the migratory bird resource in the future due to declining trends in active hunters for some Tribes and also increasing population trends for many migratory game birds (as identified in the 2022 State of the Birds Report; see [state-of-the-birds-2022-spreads.pdf](https://stateofthebirds.org/state-of-the-birds-2022-spreads.pdf) at stateofthebirds.org). Based on the historical and future expected minimal impacts to migratory game bird resources, we are proposing to simplify the process for special Tribal migratory game bird hunting regulations for the upcoming season (2023–2024) and afterwards. We propose to remove the requirement that Tribes annually submit their proposed migratory game bird hunting regulations (and associated monitoring, anticipated harvest, and capabilities for regulation development and enforcement) for our review and

approval. We also propose no longer to publish special Tribal migratory game bird hunting regulations in the *Federal Register* (i.e., a proposed and final rule). We further propose to adopt as regulations elements of our current guidelines for establishing special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. Tribes that comply with these regulations will be authorized to independently establish special Tribal migratory bird hunting regulations.

By allowing Tribes to independently establish special migratory bird hunting regulations, the Service recognizes Tribal sovereignty to exercise reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members on their reservation. As an alternative to promulgating special Tribal migratory game bird hunting regulations, Tribes may choose to observe the hunting regulations established by the State or States in which the reservation is located. We have been coordinating with Tribes on this proposed regulatory approach for Tribal self-management of the harvest, and we have received positive feedback thus far. The proposed action will reduce the annual administrative burden on both the Tribes and the Service to propose, review, and publish special migratory game bird hunting regulations while continuing to sustain healthy migratory game bird populations for future generations.

As with the current process, these proposed regulations will be applicable to those Tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. These proposed regulations also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the reservations where Tribes have full wildlife-management authority over such hunting, or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands within the reservation. Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands. The question of jurisdiction is more complex on reservations that include lands owned by non-

Indians, especially when the surrounding States have established or intend to establish regulations governing migratory game bird hunting by non-Indians on these lands. In those cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with Tribal and State officials in the affected States where Tribes may wish to establish special migratory game bird hunting regulations for Tribal members on ceded lands. It is incumbent upon the Tribe and/or the State to request consultation. We will not presume to make a determination, without being advised by either a Tribe or a State, that any issue is or is not worthy of formal consultation.

In the rule portion of this document, we have included the requirements for Tribes to follow if they establish special Tribal migratory bird hunting regulations, based on elements from the 1985 guidelines. In addition, we encourage Tribes wanting to establish special migratory game bird hunting regulations to consider the elements we previously required in their proposals: (1) Season dates and other regulations; (2) anticipated harvest; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit the level of harvest, where it could be shown that failure to limit such harvest would have serious impacts on the migratory bird resource; and (5) Tribal capabilities to establish and enforce migratory bird hunting regulations. We recommend that Tribes allowing swan hunting require all swan hunters to successfully complete a course on swan identification and conservation to minimize take of trumpeter swans during the swan season.

The proposed regulations provide for the continuation of Tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We are supportive of this harvest provided it does not take place during the closed season required by the Convention and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of the guidelines, we have reached annual agreement with Tribes for migratory game bird hunting by Tribal members on their lands or on lands where they have

reserved hunting rights. We will continue to consult with Tribes that wish to reach a mutual agreement (memorandum of understanding (MOU) or something similar) on conducting short-term (possibly several years) experimental hunting using methods outside of the Federal hunting methods at § 20.21 for on-reservation hunting by Tribal members.

The experimental hunting period by a Tribe will provide data to the Service for future consideration if a Tribe would like to make the additional hunting method permanent. Tribes should send such requests for consultation to the Service's Assistant Director for the Migratory Bird Program at least 9 months before the season or ceremony regarding hunting methods outside of these proposed Federal regulations (see **FOR FURTHER INFORMATION CONTACT**). We intend to make any proposed MOU or other agreement available through a notice of availability to allow for public comment; however, we may not use the public process for very minor or nonsignificant MOUs or agreements. The Service will make all signed MOUs or agreements public. If any individual Tribe wishes to make these additional experimental hunting methods permanent and the Service agrees, the Service will conduct rulemaking (using any data from the experimental hunt) to amend 50 CFR part 20 to allow Tribal members to use these additional hunting methods.

If this proposed rule is finalized, starting with the 2023–2024 hunting season, annual Tribal hunting season regulations will no longer be published in the *Federal Register*, alleviating the administrative burden to both the Service and the Tribes of developing special Tribal migratory bird hunting regulation proposals, reviewing proposals, and publishing Tribal regulations as Federal regulations. This proposed process would not apply to seasons for subsistence take of migratory birds in Alaska.

Public Comments

We invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations for the 2023–2024 season and beyond. Before finalizing this proposed rule, we will consider all comments we receive. These comments,

and any additional information we receive, may lead to final regulations that differ from this proposal.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by e-mail or fax. We will not consider mailed comments that are not postmarked by the date specified in **DATES**.

We will post all comments in their entirety—including your personal identifying information—on <https://www.regulations.gov>. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Required Determinations

Based on our most current data, we are affirming our required determinations made in the November 3, 2022, proposed rule (87 FR 66247); please see that document for descriptions of our actions to ensure compliance with the following statutes and Executive Orders:

- National Environmental Policy Act;
- Endangered Species Act;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act of 1995;
- Unfunded Mandates Reform Act; and
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, and 13563.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, for the reasons described in the preamble, we propose to amend title 50, chapter I, subchapter B, of the Code of Federal Regulations as follows:

PART 20—MIGRATORY BIRD HUNTING

1. The authority citation for part 20 continues to read as follows:

AUTHORITY: 16 U.S.C. 703 et seq., and 16 U.S.C. 742a–j.

2. Revise § 20.110, including the section heading, to read as follows:

§ 20.110 Regulations for certain Federal Indian reservations and ceded lands.

(a) *Tribal sovereignty.* The Service recognizes Tribal sovereignty to exercise reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members on their reservation. Accordingly, Tribes may independently (separate from the State or States in which the reservation is located) establish special migratory game bird hunting regulations. Migratory birds may be taken if the take is consistent with the regulations in this section and applicable Tribal hunting regulations.

(b) *Applicability.* Special Tribal migratory game bird hunting regulations may be established by Tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. These regulations also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the reservations where Tribes have full wildlife-management authority over such hunting, or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands within the reservation.

(c) *Special regulations.* Special Tribal migratory game bird hunting regulations must be consistent with the annual March 11 to August 31 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds, as amended by the Protocol Between the Government of Canada and the Government of the United States of America Amending the 1916 Convention Between the United Kingdom and the United States of America for the Protection of Migratory Birds in

Canada and the United States, and with these provisions:

(1) Tribes may establish on-reservation hunting regulations, for both Tribal and nontribal members, with hunting seasons that may differ from those in the State(s) in which the reservations are located.

(i) *Regulations for both Tribal and nontribal members:* Opening and closing dates, season length, and daily bag and possession limits for nontribal members on the reservations must be within the annual frameworks for migratory bird hunting seasons established by the Service, and all Federal hunting regulations in this part also apply to nontribal hunters. Tribes may choose to set the same opening and closing dates, season length, and daily bag and possession limits for hunting by Tribal members and nontribal members on their reservations, or, in accordance with the provisions in paragraph (c)(1)(ii) of this section, Tribes may choose to establish regulations for Tribal members only.

(ii) *Regulations for Tribal members only:* Tribes may establish on-reservation hunting regulations by Tribal members only, with hunting seasons that may be outside of annual frameworks for season dates, season length, and daily bag and possession limits. All Federal hunting regulations in this part apply. For a short-term experimental hunt, a Tribe and the Service may formally agree on allowed methods of take, notwithstanding the regulations in § 20.21. The Service will make public any such formal agreement.

(2) Tribes may establish off-reservation hunting regulations by Tribal members on ceded lands, with hunting seasons that may be outside of annual frameworks for season dates, season length, and daily bag and possession limits.

(d) *Provisions for ceded lands.* Tribes that have special migratory game bird hunting regulations for Tribal members on ceded lands must send a copy of the Tribal regulations to officials in the affected State(s) prior to the season opening.

Shannon Estenoz,
Assistant Secretary for Fish and Wildlife and Parks.

